

NOTICE OF EFFECTIVE DATE OF REGULATION CHANGE

California Code of Regulations Title 2, Administration Division 1, Administrative Personnel

DATE: April 12, 2002

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: ADOPTION OF RULES 60-60.10, STATE EMPLOYEE MEDIATION
PROGRAM

This memorandum is to advise you that the proposed revisions to the California Code of Regulations (CCR) to adopt CCR Sections 60-60.10 regarding the State Employee Mediation Program (SEMP), as described in the State Personnel Board's (SPB) AMENDED NOTICE OF PROPOSED ADOPTION OF REGULATIONS AND STATEMENT OF REASONS dated January 10, 2002, became effective upon filing with the Secretary of State on April 4, 2002, subsequent to adoption by the five-member State Personnel Board on February 7, 2002. A copy of the final regulations is attached. These final regulations will be published in the CCR, Title 2, Sections 60-60.10.

BACKGROUND:

The Office of Administrative Hearings (OAH) has implemented regulations related to alternative dispute resolutions conducted by state agencies; however, Government Code Section 11420.20 authorizes state agencies that engage in alternative dispute resolution, including mediation by a neutral mediator, to implement their own regulations to govern their particular mediation process. The SEMP, established as a pilot program by SPB several years ago as a means of providing an efficient, inexpensive, non-adversarial alternative to managing or resolving disputes that occur within the workplace, has proven to be extremely successful. The program offers an innovative, forward-looking approach to diffusing workplace disputes by utilizing mediation as an informal collaborative problem-solving process.

REGULATORY SUMMARY:

These regulations will implement the practices and procedures that SPB has identified as most beneficial in effectuating the conflict resolution goals embodied in SEMP. A few of the provisions set forth in these regulations are similar to the model regulations promulgated by OAH, particularly with regard to the qualifications of mediators and the confidentiality of communications made during SEMP mediations. However, the great majority are specific to SEMP and simply cannot be adequately addressed by OAH's model regulations.

CONTACT PERSON:

Please direct inquiries regarding this action to Bruce Monfross at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010 or (916) 653-1403, TDD (916) 653-1498. Questions regarding the regulatory process in conjunction with these regulations should be directed to Steve Unger at (916) 651-8461 or TDD (916) 653-1498.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Final Regulations

Regulations Governing the State Employee Mediation Program

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

§ 60. Definition and Purpose.

Mediation refers to a process whereby a neutral third person called a Mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties, not the Mediator. The role of the Mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

The purpose of the State Personnel Board's State Employee Mediation Program (SEMP) is to provide an efficient, inexpensive, non-adversarial alternative to managing or resolving disputes that occur within the workplace, without diminishing the rights of any party to the mediation to subsequently address the issue(s) in a more traditional administrative, judicial, or other forum.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.1. Exclusivity.

The model regulations related to alternative dispute resolution implemented by the Office of Administrative Hearings (1 Cal. Code Regs., Sections 1200-1230), pursuant to Government Code Section 11420.20, are not applicable to SEMP.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.2. Scope.

Any party to a dispute that is either pending, or has the potential to come before the Appeals Division of the State Personnel Board, may request that the dispute be referred to mediation.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.3. Referral of Proceedings.

(a) Any party to a dispute may initiate mediation by filing a request for mediation with the SEMP unit of the Appeals Division. The application shall contain:

(1) a statement as to whether an appeal or complaint has been filed with the State Personnel Board or whether the dispute is pending in any other forum;

(2) an election to mediate the dispute;

(3) the name of the appointing authority and the names, addresses, telephone and fax numbers or other appropriate electronic communication addresses or numbers of all individual parties to the dispute; and

(4) a statement as to whether all of the parties to the dispute have agreed to mediation.

(b) Filing a request for mediation constitutes consent to submit the dispute to mediation. A request for mediation shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to the dispute, unless each party agrees otherwise in writing.

(c) A designee of the State Personnel Board shall review the application to determine if the dispute is suitable for mediation. If it is determined that the dispute is not suitable for mediation, the designee of the State Personnel Board shall notify the requesting party of that fact. If it is determined that the dispute is suitable for mediation, the designee of the State Personnel Board shall assign the matter to a Mediator for case development.

(d) Upon receipt of assignment of the mediation, the Mediator shall contact the party requesting mediation as well as the other parties to the dispute to determine

whether all parties have agreed to mediate, confirm that the case is suitable for mediation, and develop the case for mediation. The Mediator will discuss with each party their perspective of the facts, issues, and expectations for the mediation.

(e) If the Mediator is unable to confirm that all of the parties to the dispute are willing to mediate, or if the Mediator determines the dispute is not suitable for mediation, the parties shall be so notified and the matter closed or referred back to the appropriate Appeals Division process.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.4. Date, Time and Place of Mediation.

Once the Mediator has confirmed voluntary participation by the disputing parties, and has confirmed that the case is suitable for mediation, the Mediator shall, in consultation with the parties and co-Mediator, fix the date, time, and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the Mediator. The mediation need not be completed within any set period of time, and more than one mediation session may be scheduled if all parties and the Mediator agree that additional mediation sessions would prove productive. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by written stipulation of the parties.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.5. Attendance at Mediation.

All involved, consenting parties shall attend the mediation session(s). A party other than a natural person (e.g., a governmental entity) satisfies this attendance requirement by sending a representative familiar with the facts of the dispute, and that person shall have the authority to negotiate and effectively recommend settlement to the governmental entity involved. Any party to the mediation may have the assistance of an attorney or other representative, but the role of the representative may be limited by

agreement of the parties and the Mediator so as to best effectuate the goals of the mediation.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.6. Standards of Conduct for Neutral Mediators.

Any Mediator, whether a trained volunteer or paid, participating in the mediation pursuant to these regulations shall comply in good faith with the California statutes and regulations governing mediation, including Evidence Code Sections 703 and 1115-1128 and 2 Cal. Code Regs., Sections 60-60.10.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.7. Agreements.

Agreements resolving the mediated dispute may be written, signed, and dated by the parties or an authorized representative of the party or parties.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.8. Termination of Mediation.

Any party or the Mediator may terminate the mediation at any time by written notice to or by the Mediator and all other parties to the mediation, or in any other manner provided by Evidence Code Section 1125. If any party or the Mediator terminates the mediation, or if the mediation does not result in resolution, the parties shall resume the same status as before the mediation and shall proceed as if mediation had not taken place.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.9. Confidentiality of Communications.

Confidentiality shall be governed by Evidence Code §703.5 and Evidence Code Sections 703.5 and 1115-1128.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.

§ 60.10. Alternate Resolution of the Complaint/Appeal.

It is the policy of the Board to encourage parties to a complaint/appeal to attempt to resolve the complaint/appeal informally through use of the State Personnel Board's State Employee Mediation Program. Toward that end, if the parties to a complaint/appeal filed with the Board mutually request, in writing, an extension of any deadlines set forth in Board regulations concerning any hearing conducted by the Board in an effort to utilize the above-referenced alternative dispute resolution processes, the Board or its designated representative may grant such a request for an extension not to exceed 60 days.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Section 11420.20, Government Code.